88-2111

Supreme Court, U.S.
FILED
APR 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-

IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1988

HARVEY H. TODA,

Petitioner,

V.

CITY AND COUNTY OF HONOLULU,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Harvey H. Toda, pro se
Petitioner
1363 Hoowali Street
Pearl City, Hawaii 96782
(ac 808) 456-1328

QUESTIONS PRESENTED

1. Whether the Ninth Circuit Court of Appeals erred in affirming the Summary Judgment requested in the lower Court?

2. Whether the Ninth Circuit Court of Appeals erred in violating the Rights of Petitioner in a TRIAL, and TRIAL BY JURY?

3. Did the Ninth Circuit Court of Appeals erred in accepting lower Court's verdict, without the explanation of Petitioner?

4. Did the Ninth Circuit Court of Appeals erred in the CONSPIRACY of this case, rather than subjugation upon denials by Petitioner?

5. Did three more discovery identify the reason for this CONSPIRACY?

6. Lawful reasons apparently existed but the subject matter injured Petitioner and the reason is why?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

NO.

HARVEY H. TODA,

Petitioner,

V.

CITY AND COUNTY OF HONOLULU,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE U.S. DISTRICT COURT OF HAWAII

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Harvey H. Toda, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the U. S. District Court of Hawaii, entered in the above-entitled case on Nov. 21, 1986.

Opinions of the United States Court of Appeals For the Ninth Circuit

See appendix iii-1 Exhibit A-1

FILED Feb. 8, 1989
Cathy A. Catterson, Clerk

No. 87-2820
DC No. CV-86-1069-HMF

ORDER

Before: CHOY, O'SCANNLAIN, and TROTT, Circuit Judges

Rehearing DENIED.

Petition with suggestion for rehearing en banc is REJECTED.

(Order cited without date)
(2-8-89, upon phone call by Asst.Dep.Clk. Charlene M. Druzek, received)

Opinion of the United States Court of

Appeals For the Ninth Circuit

See appendix iii-2 Exhibit A-2

FILED Feb. 21, 1989
Walter A.Y.H. Chinn, Clerk

No. 87-2820
DC No. CV-86-1069-HMF

JUDGMENT

Before: Court, cause is AFFIRMED.

A TRUE COPY
ATTEST Feb 16 1989

CATHY A. CATTERSON

Clerk of Court

by: S/S Charlene M. Kluzek
Deputy Clerk

Filed and entered: December 02, 1988

Opinion of the United States Court of Appeals For the Ninth Circuit

See appendix iii-3 Exhibit A-3

Not for Publication

United States Court of Appeals
For the Ninth Circuit

FILED Dec 2 1988
Cathy A. Catterson, Clerk

No. 87-2820
DC No. CV-86-1069-HMF

MEMORANDUM#

U.S.District Court, Dist. of Hawaii
Harold M. Fong, District Judge,
Presiding

Submitted November 16, 1988##
Honolulu, Hawaii

Before: CHOY, O'SCANNLAIN, and TROTT,

Circuit Judges

Appealed District Court's Summary Judgment for the City and County of Honolulu, issues of regulatory taking, procedural due process, infringement of contractual rights, and conspiracy. We AFFIRM.

Case not for public use

The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument.

Toda filed claim:

(1) against infringement of contracts

(2) to due process of law; and

(3) to just compensation

DISCUSSION:

1. de novo entered.
2. Summary Judgment entered due to material fact.
   A. Regulatory Taking
   B. Procedural Due Process
   C. Infringement of Contractual Rights
3. CONSPIRACY CHARGES: allowed summary judgment
4. ex post facto law
   application of new punitive measures to a consumated crime.

Opinion of the United States District Court, District of Hawaii

SEE APPENDIX iii-13 Exhibit B-1

Judgment: FILED 10-8-87
by Walter A. Y.H. Chinn, Clerk

Summary Judgment entered on Decision by Court.

Opinion of the United States District Court, District of Hawaii

SEE APPENDIX iii-15 Exhibit B-2

ORDER: FILED 10-6-87

signed 10-6-87 by Judge Harold M. FONG

alleges just compensation
infringement of contracts
due process of laws
and, CONSPIRACY

Summary Judgment ordered

Opinion Requested: Section 3:835--Certiorari to review case pending in Court of Appeals before judgment:

Tax Appeal Court Case 2485
(Hawaii)

Supreme Court Case 12975
(State of Hawaii)

United States District Court 89-00087 DAE

This case is similar to case 87-2820 and District Court of Hawaii CV86-1069 as now, applied for.

Earlier tie-in DENIED.

Again requested. (Scheduling Conference)

appendix case as iii-27 Exhibit C

The ORDER of panel of judges denied the petition for rehearing, on Feb 8, 1989, under Exhibit A-1.

There was no trial by jury as requested, but a de novo review is suggested under Appendix iii-7, line 6, wherein Petitioner made no Opening Statement nor any Closing Statement for the CONSPIRACY case.

A trial by jury is requested.

JURISDICTION:

Time: Under Rule 20 .4 the request for rehearing was denied on 2-8-89. The judgment was made on December 2, 1988. It AFFIRMED the decision of the lower court.

However, under iii-13, Exhibit B-1, the lower court's DECISION was by the Court.

The RIGHT to trial by jury exists.

Statute of Limitation, does not move until FOUND OUT as Conspiracy.

Fraudulent Taxation, brings in Conspiracy.

Additional reasons and discoveries adds Evidence to Conspiracy.

The State Courts have refused to assist in the Constitutional issue.

The police have referred the matter as Civil Matter. So, has the Prosecutor's Office. The Director of Finance, refused.

QUESTIONS PRESENTED:

1. Why was the property 9-9-19: 01 taxed as residential, given same VALUATIONS as before, the City Government knew of this tax--but did nothing to help owners or Petitioner; after the property was down-zoned to preservation?

2. After ten months, when Petitioner went in to obtain a permit to build a house was denied, as it was a preservation zoned property, and now the VALUATIONS for July 1, 1983 to December 31, 1983 was still the same but the VALUATIONS did have a preservation zoned account. Though notified through an appeal on December 1, 1983, it still remained the same. The Assessor was notified but he did not do anything. The Assessor refused to make any statement on this case.

Why did the TAXES continue?

3. The Taxes remained the same for residential. Though the change to preservation remained the same, the VALUATIONS remained the same area as residential, and thus it was APPEALED TO THE BOARD OF REVIEW. The jurisdiction as provided was for 1984, July 1 to 1985, June 30. Thus, the value was changed from $93,106 to the new approved value of $28,078, or a tax from $607.78 to $189.54, and every 6 months changed from $303.89 to $94.77. The City's law allows a compromise, and why wasn't it done with the time before it?

4. The property was now UPZONED in 1-acre of the 3.7 acres or 203,844 s.f. from preservation to R-10 residential. Marked EXCEPTIONS for deductions was not given, and so appealed. The monetary high was cut-down and 50% deduction of "no pass zone" was instituted. How-

ever, and the upzoned partial taxes were $700.82 to $587.68, or $293.84 every 6 months. The marked exceptions were not taken into effect as it should be. The illegal prior downzoning was not taken for correction. Why should the City forbid correcting their mistakes?

5. Other properties in the Pacific Heights residential areas, Makiki Heights, or many other places were not downzoned, for having steep slopes in their areas. Were there other reasons why this property was downzoned, and now upzoned?

STATUTES INVOLVED

1. The RIGHT to trial by jury, has been requested. Under Amendment 1, the right to redress for grievance(iii-28) is given. Under iii-28, Amendment 7, the Right to trial by jury cannot be injured by a decision of Court.(iii-13)

2. Ex post facto Law: No Decision was given by the City Council, and was told to wait for the NEW LAW by the Land Use Ordinance 86-96. It was made public on 10-22, 1986. Within a month, this case of Conspiracy was initiated. Ord. 86-96 is also a misdemeanor. Ord. 3234 of 1969 has a grandfathering law that provides Double "AA" zones will be called R-3 residential zones. Though the steep hillsides are not a part of the R-3 zone the tie-in of grandfathering the law makes it possible to continue the law. Ord. 3234 is also a misdemeanor. The Ord. 86-96 elliminating 9-9-19:01 as tied-in by Ord. 3234, is a right of Article I Section 10 of the U.S.Constitution. (see iii-31)

3. NOTIFICATION: This zoning was made through Resolution 81, the City and County of Honolulu as an agency, gave RIGHTS to

people living in the agricultural zone area as marked, to obtain a contract or law for its subdivision. Sunset View Lots with 56 lots and a 40 feet driveway was accepted. This was a Territory, but now this is a State, with the Constitution as the Law of the Land.

The Yoon Family converted their agricultural land as zoned into 56 lots with a 40 feet driveway for exit, under Resolution 81; it was accepted by the government and it became law; as marked into book from 1949 till today, and taxes have been paid.

The least the government can do is to NOTIFY people that a new law was to take effect, and the ones involved can make their proper statement.

The Right as governed in this contract cannot be disregarded.

The Hawaii Revised Statues (see

iii-34 & 35) Sec. 101-20 indicates known persons must be notified by legal papers. The Hawaii Revised Statutes Section 46-4 COUNTY ZONING, is the "Enabling Act"(see iii-36) which has a "provision" within that excludes regulations as adopted by any county in effect prior to July 1, 1957.

Without the statement of Petitioner Ord. 81-79 was enacted. Though I feel it illegal, it was again used into Ord. 82-62, outlawing lot of Petitioner with steep hillsides. Sec. 101-20 NOTIFY HRS though property was pegged out and owner known, was refused to be given any notice of tne change in zoning.

Under Amendment 14, Section 1, the U.S.Constitutional RIGHTS to notification for loss of property through due-process and equalization, was violated.

INITATIVE for Revised Charter of the City and County of Honolulu, 1973 (see iii-37)Title 20, Revised Laws of Hawaii, 1955, allowing Honolulu Gov't. Charter.

Sec. 1-101 Revised Ordinances shows a Single Corporation is the City Government.

Sec. 1-103 Structure of Government Revised Ordinances shows that "two branches" of government, is a part of this structure.

See iii-38 as a Legislative Branch, and Executive Branch of the government.

See iii-29 one or several denies the use of one corporation with two branches of government, as only one branch of government is allowed by law.

See iii-41 Revised Ordinances for public hearings under Sec. 13-106, 1 & 2 requires Legislative requirements only.

The Structure of Government:
City and County of Honolulu
Under Rule 28, Filing and Service--
Special Rule for Service Where Constitutionality of Act of Congress or State Statue is in Issue
Document or Brief amicus curiae
under .4 (b) that 28 U.S.C. Sec. 2403 (a)may be applicable and shall be served upon the: Solicitor General
Department of Justice
Washington, D.C. 20530
is requested to check on page 12, Statute involved, and below of the various questions or sub-allegations of this report.

The Mayor of the City and County of Honolulu is also a part with the City Council who are the legislators.
This corporation is a subsidiary of the State of Hawaii, as a county.

first-class postage prepaid
with mailing envelope
to his address, as written.
Can the Solicitor General decide
the RIGHTS for Petitioner? The Corporation Counsel refuses to admit knowledge to the Taxation given as a Fraud, and refuses to admit the sub-allegations mentioned in this report.

STATEMENT OF CASE:

This Conspiracy case was brought up in the Federal Courts.

Within 30 days, it must be reported to the Court, or it loses timeliness.

The City and County of Honolulu took from December 1, 1983, case turned over to the City Council, Reconsidered, and no Decision obtained. It was to await public sale of Ord. 86-96.. Witnin the 30 days after the public sale of Ord. 86-96, and this report is made. Because it was of Constitutional Matters, it was decided as a Federal Case after due-cause was made known to the City and County of Honolulu, and they refused participation. If the City would handle this matter, then, there would be no exercise of any court action with the Federal Government.

Because, nothing would matter, a suit began. This shows action.

REASONS FOR GRANTING WRIT:

A scheduling hearing as required in the Conspiracy Case with sub-allegations that should be considered within the suit, was initiated. Judge Conklin scheduled the hearings.

Judge Fong then had hearings relative to requests of Defendants. However, this had no Constitutional Matter, and a tie-in with the State Civil Courts with similar violations was denied.

A summary judgment requested was denied. Defendant wanted to know more of this case and so given a deposition. It was felt that she obtained whatever she wanted to know. Now, the same request for a summary judgment is given by defendant. Though it was never approved it remained open, and a DECISION BY COURT showed it to be a SUMMARY JUDGMENT.

The Trial by Jury, is pending.

ARGUMENT:

The Ninth Circuit Court of Appeals affirmed the Summary Judgment of the lower Court. The same statement as given by the lower Court is duplicated.

The Ninth Circuit Court of Appeals approved the hearing, as called a "de novo"and substantiated. The requested TRIAL and TRIAL BY JURY, stands. This has not taken place as yet.

The Ninth Circuit Court of Appeals approved the findings of the lower Court, and I believe there was an error. The lower Court stated that my signture to sub-allegations, including that of conspiracy(target crime), was not my issue, in this case. That, CONSPIRACY in the sense of injuring Petitioner was at fault--that it probably was a legal matter, and not a crime.

At the proposal for a scheduling conferance the subject matter for a hearing was denied. Although it was denied, Judge Fong allowed a hearing and it was mentioned that a CONSPIRACY was the case and other sub allegations that went with it. The Deputy Corp. Counsel arranged a "Deposition" and asked if it was possible to sign off the items not to sue the City. CONSPIRACY, could not be signed off, but the (target crime) conspiracy of crime and its sub-allegations were agreed to be signed, and she made an agreed-statement and it was signed. By this reasoning, the lower Court felt that the sub-sections were signed off, including that of(target Crime)Conspiracy, and declared a Summary Judgment.

The loss of overtaxation, notification, Civil Rights Violation, the loss of just compensation, infringement of contracts by the City under Resolution 81

brought as LEGAL R-3 Subdivision as a RESIDENTIAL under Tax Appeal Court 1798 by the Court in 1978 and closed with an agreed-statement then, under Ordinance 3234 Comprehensive Zoning Code, of 1969. Also, under Ord. 86-133 Sec. 3, it allows the inclusion of R-3 Residential and the violation of ex post facto law.

In UPZONING the property, the cost figures were discovered to be too high and without the person present, it was brought down, then further brought down by the Attorney, then further brought down by the Trial Court. The matching amount is in error, and the finance dept. apparently filed it wrong. My corrected amount should be lower, if accepted.

In checking against the laws, it was found that two-branches of government is tied into a Corporation. My discovery indicates that another INITIATIVE is

necessary.

Why, was this constant injury done to Petitioner? Persons exposed to this item has been asked, but none have stated anything to add to the matter.

CONCLUSION:

Punitive Damages though it be legal and probably done with honest intent, is injuring this Petitioner.

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

Harvey H. Toda pro se
for Petitioner

June 26, 1989.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT FILED

HARVEY H. TODA,	Feb. 8, 1989
Plaintiff-Appellant,	Cathy A. Catterson, Clerk
v.	U.S.Court of Appeals
CITY AND COUNTY OF HONOLULU,	No. 87-2820
Defendant-Appellee.	DC No. CV-86-1069-HMF
	ORDER

Before: CHOY, O'SCANNLAIN, and TROTT, Circuit Judges

The panel has voted to deny the petition for rehearing. Judges O'Scannlain and Trott have voted to reject the suggestion for rehearing en banc, and Judge Choy has so recommended.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

(Called by Phone) S/S 2-8-89

by Charlene M. Druzek, Asst.Dep.Clk.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HARVEY H. TODA, Plaintiff-Appellant, vs. CITY AND COUNTY OF HONOLULU, Defendant-Appellee.	FILED IN THE U.S.DIST.CRT. DIST.OF HI. Feb. 21, 1989 at 9 o'clock and 40 min. A.M. WALTER A.Y.H. CHINN, CLERK No. 87-2820 DC CV 86-1069 HMF

APPEAL from the United States District Court for the District of Hawaii(Honolulu)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii(Honolulu) and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said

District Court in this Cause be, and hereby is Affirmed.

A TRUE COPY
ATTEST Feb 16 1989

CATHY A. CATTERSON

Clerk of Court

by: S/S Charlene M. Kluzek
Deputy Clerk

Filed and entered December 02, 1988

Exhibit A-3

Not for publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
Dec 2 1988
Cathy A. Catterson, Clerk
U.S.Court of Appeals

HARVEY H. TODA,

Plaintiff-Appellant,

v.

CITY AND COUNTY OF HONOLULU,

Defendant-Appellee.

NO. 87-2820

DC No. CV-86-1069-HMF

MEMORANDUM#

Appeal from the United States
District Court for the District
of Hawaii
Harold M. Fong, District Judge,
Presiding

Submitted November 16, 1988##
Honolulu, Hawaii

Before: CHOY, O'SCANNLAIN, and TROTT,
Circuit Judges

Harvey H. Toda Appeals the District court's summary judgment for the City and County of Honolulu ("Honolulu") on the issues of regulatory taking, procedural due process, infringement of contractual rights, and conspiracy. We affirm.

FACTS AND PROCEEDINGS

This action arises out of the change in zoning of real property identified as Tax Map Key Number 9-9-19-01 situated on Welelau Place, Aiea Heights, State of Hawaii. In November of 1942, Honolulu established an "AA" residential zoning for the

---

This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P. 34(a), Ninth Circuit Rule 34-4.

---

subject property. In 1963, Toda and his wife purchased the real property as tenants by the entirety. In 1969, Honolulu rezoned the subject parcel to "R-3" residential pursuant to a Comprehensive zoning code. In 1981, Honolulu adopted a development plan for the Primary Urban Center which down-designated the parcel to "Preservation." In 1982, the parcel was down-zoned to "P-1" preservation by Honolulu's adoption of Zoning Map No. 7. In 1985, one acre of the subject property was redesignated "residential" by amendment of the development plan for the Primary Urban Center. In 1986,

that one acre portion was rezoned "R-10" Residential by amendment to Zoning Map No. 7.

Toda filed a claim in the district court alleging that Honolulu had violated his constitutional rights: (1) against infringement of contracts; (2) to due process of law; and (3) to just compensation. Each of these claims had various sub-allegations.

At a hearing before Judge Fong, on Honolulu's motion for summary judgment, Toda appeared to withdraw several of his complaints, and the remaining claims were dealt with by way of summary judgment. The order was filed and summary judgment granted to Honolulu on the issues of regulatory taking, infringement of contractual rights, procedural due process, and conspiracy. Toda filed an appeal before the order was filed, but after the hearing, thus, pursuant to Fed. R.

App. P. 4(a)(1) and (2), the notice is timely.

DISCUSSION

1. Standard of Review

A district court's entry of summary judgment is reviewed de novo. T.W.Elec. Serv., Inc. v Pacific Elec. Contractors Ass'n, 809 F.2d 626, 629 (9th Cir.1987).

2. Appellant's Constitutional Claims

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In addition, when a motion for summary judgment is made and supported as provided by the rules, the adverse party "must set forth specific facts showing that there is a genuine

issue for trial." Fed. R. Civ. P. 56(e). Toda here did not set forth any genuine issue of material facts, thus leaving none in dispute. The district court applied the applicable law to the undisputed facts.

A. Regulatory Taking

The Supreme Court held in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985), that a just compensation claim based upon a regulatory taking is not ripe for review by the federal court until the concerned party has: (1) sought and received a final decision by the proper governmental authority responsible for implementing the regulation, id. at 186; and (2) sought and been denied compensation through state procedures. Id. at 195. Such adjudications allow factfinding for which the state agency is particularly qualified, and ensures that the claim is

ripe for review. Id.; Kinzli v City of Santa Cruz, 818 F.2d 1449, 1453-54 (9th Cir. 1987), amended, 830 F.2d 968 (1987), cert. denied, 108 S. Ct. 775 (1988). Toda has never claimed that a development plan of his was rejected by the authorities. Therefore, under Hamilton Bank, this case cannot be considered ripe for review. The district court properly granted summary judgment to the City and County of Honolulu on this matter.

B. Procedural Due Process

Toda claims that he was denied procedural due process because Honolulu did not inform him of its zoning changes. This circuit has ruled that the enactment of a general zoning ordinance is a legislative act, Kuzinich v. County of Santa Clara, 689 F.2d 1345, 1349-50 (9th Cir. 1982), which does not require procedural due process to anyone affected by it. Texaco v. Short, 454 U.S. 516, 531-38 (1982); O'Neill v. Town of Nantucket,

711 F.2d 469, 471 (1st Cir. 1983). Therefore, the district court properly found that the zoning ordinances about which Toda complains need not have been preceded by notice to the landowners concerning their implementation.

C. Infringement of Contractual Rights

Toda also argues that his purchases of the property and his payment of property taxes vested in him the right to retain the property, zoned as it was when he first purchased it. The zoning regulations established on Toda's property do not constitute a contract between Honolulu and Toda. Therefore, the zoning remained subject to modification. See generally Texaco, 454 U.S.at 532-33.

Therefore, the district court was correct when it held that no constitutional violation of contract had occurred as a result of Honolulu's zoning regula-

tions.

3. Conspiracy Charges

Toda contends that Honolulu comspired to downzone his property so that it could later acquire his property at a reduced value for its use as a sewage facility. Honolulu submitted the affidavits of personnel in charge of sewage station development, Yamashita and Honke, stating that they had no knowledge that Honolulu planned on using Toda's property as a sewage pump station. According to Fed. R. Civ. P. 56(e), Toda was required to set forth specific facts in light of these affidavits. His failure to do so allowed summary judgment on this issue.

4. Ex Post Facto

Finally, Toda presents a new argument on appeal that the zoning laws violated the Constitution in that they were ex post facto. Even if this court were to hear the claim at this time, it

could not grant Toda any relief on this ground. Ex post facto laws only prohibit the application of new punitive measured to a consummated crime. Lindsey v. Washington, 301 U.S. 397, 401 (1937). This court is not presented with an ex post facto claim involving a crime.

CONCLUSION

The disttict court appears to have dealt with all of the issues before it. Given the multifaceted nature of Toda's allegations, the district court did an admirable job of sifting his contentions so as to separate out and dispose of the above arguments.

We uphold the district court's summary judgment dismissal of all of Toda's claims.

AFFIRMED.

iii-13 Exh. B-1

UNITED STATES DISTRICT COURT

District Of Hawaii

HARVEY H. TODA,

V.

CITY AND COUNTY OF HONOLULU

JUDGMENT IN A CIVIL CASE

Case No: 86-1069

____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Summary Judgment is entered in favor of Defendant and against Plaintiff.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Oct 8 1987

at 1 o'clock and 40 min. P.M.

Walter A.Y.H. Chinn, Clerk

cc: all counsel

October 8 1987

s/s L A
Clerk

(By) Deputy Clerk

iii-15 Exh. B-2

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HARVEY H. TODA, Plaintiff, vs. CITY AND COUNTY OF HONOLULU, Defendant.	CIVIL NO. 86-1069 ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED IN THE U.S.DISTRICT COURT District of Hawaii at 9 o'clock and 40 min.P.M. WALTER A.Y.H. CHINN, CLERK

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant's Motions for Summary Judgment and Dismissal of the Complaint came before this Court for hearing on September 8, 1987. Diane T. Kawauchi, Deputy Corporation Counsel, City and County of Honolulu, appeared on behalf

of Defendant, and Plaintiff appeared pro se. The Court having reviewed the motion and the memorandum and affidavits in support thereof, and memorandum in opposition thereto, having further reviewed the stipulations of the parties, having heard the arguments of the parties and being fully advised in the premises therein, finds and orders as follows:

Plaintiff is the owner of the subject real property located on Welelau Place, Aiea Heights, City and County of Honolulu, and identified as Tax Map Key Number 9-9-19-01. In November of 1942 Defendant established an "AA" residential zoning for the subject property. In 1969, Defendant's Comprehensive Zoning Code rezoned the subject parcel "R-3" residential. In 1981, Defendant adopted the Development Plan for the Primary Urban Center, which down-designated the parcel to "Preservation." In 1982, by Defendant's adoption of Zoning Map No. 7,

the parcel was downzoned to "P-1" Preservation. In 1985 Defendant redesignated a one-acre portion of the subject property by amendment to the Development Plan for the Primary Urban Center to "Residential," and in 1986 said one-acre portion was rezoned "R-10" Residential by amendment to Zoning Map No. 7.

Plaintiff's Complaint alleges that Defendant's actions in down-designating and downzoning the subject property to preservation uses violated rights guaranteed to Plaintiff in the United States Constitution to just compensation, against infringement of contracts, and to due process of the laws. In addition, Plaintiff has alleged a conspiracy against Plaintiff in said actions of Defendant. The Court has reviewed the stipulations submitted by the parties as to facts and the withdrawal of claims

and is unclear as to whether said stipulations dispose of all of the cause of actions alleged in the Complaint, and therefore the Court will address each issue separately herein.

I. Regulatory Taking

The United States Supreme Court has held in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S.172 (1985) and followed in MacDonald, Sommer & Frate v. Yolo County, 106 S. Ct. 2561 (1986), that regulatory taking claims are not ripe for adjudication in the federal court until the governmental entity charged with implementing the land use regulations has reached a final decision regarding the application of the regulations to the property at issue, and the Plaintiff has sought and been denied compensation in the state court. Under

the decision in Hamilton Bank, a final and authoritative determination requires not only that Plaintiff has submitted a development plan for the property which was rejected, but also that Plaintiff sought variances or waivers which would permit uses not allowed under the regulations.

In support of its argument that Plaintiff's regulatory taking claim is not ripe for adjudication, Defendant has submitted the Affidavit of Loretta Chee who is employed in the Defendant's Department of Land Utilization and who testifies that the records of the applications for variance of zoning provisions maintained by said Department do not include any application submitted by Plaintiff for the subject property at any time after the effective date of Zoning Map No. 7 on December 23, 1982, which downzoned the subject parcel to "P-1" Preservation. The Plaintiff has submitted no evidence

to contradict the Affidavit of said Loretta Chee nor has Plaintiff submitted any other evidence to rebut Defendant's contention that this claim is not ripe for adjudication and, accordingly, the Court rules that summary judgment is warranted on Plaintiff's claim of a regulatory taking following the decisions in Hamilton Bank and Yolo County.

II. Infringement of Contractual Rights

The Court finds no infringement of any contractual right by Defendant's action in downzoning the subject property. Plaintiffbased this claim of Constitutional violation in part on the following language of Section 46-4(a), Hawaii Revised Statutes ("HRS"):

> Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The Court rules, as a matter of law, that

Section 46-4 (a), HRS, affords Plaintiff no contractual rights to the continued residential zoning of the subject parcel.

Plaintiff also alleged that the deed to the property constituted a contract with Defendant which afforded Plaintiff the right to continued residential zoning. On this point the Court concludes that even if a contractual relation did exist between the parties, the Contract Clause of Article 1 of the U.S.Constitution does not operate as an absolute prohibition but rather guards against impairment of contractual obligations only when such infringement is substantial. Zoning and land useregulations are the most fundamental of police powers of the state and are suspect only when exercised with abuse of discretion. However, where the property owner has been damaged by illegal zoning or land use regulations, the

property owner is entitled to compensation in the state and not the federal court. The Court notes that punitive damages are not recoverable against Defendant.

As the Court finds the absence of any material disputed fact, the Court concludes that summary judgment is warranted and grants Defendant's motion on the claim of infringement of contractual rights.

III. Procedural Due Process

Plaintiff claims that he is entitled to personal notice of Defendant's action in downzoning the subject property by virtue of Defendant's Ordinance No. 84-111 and the Fourteenth Amendment of the U.S. Constitution. The Court notes that the parties have stipulated to the withdrawal of Plaintiff's claim based upon the alleged violation of Defendant's Ordinance No. 84-111, and it is clear to the Court that said ordinance is inapplicable herein, it having taken effect

after the adoption of the ordinance down-zoning Plaintiff's property.

With regard to the right to procedural due process guaranteed in the U.S. Constitution, the Supreme Court has recognized the distinction to be made between legislative and administrative actions of government and the notice requirements attendant thereto as mandated by the Constitution. Bi-Metallic Investment Co., v. State Board of Equalization, 239 U.S. 441 (1915). Where the action is legislative, personal notice is not required by the Constitution, and the 9th Circuit has held that as a matter of law the enactment of a general zoning ordinance, such as Defendant's Zoning Map No. 7, is a legislative act. Kuzinich v. County of Santa Clara, 689 F.2d 1345 (9th Cir. 1982). The Court notes that the parties have stipulated that notice by

publication was provided for Defendant's adoption of ordinance No. 81-79, which enacted the Development Plan for the Primary Urban Center, and Ordinance No. 82-62, which enacted Zoning Map No. 7. Accordingly, the Court finds that summary judgment in Defendant's favor is warranted on the issue of procedural due process.

IV. Conspiracy

Plaintiff alleges that the subject property was downzoned for the benefit of subsequesnt acquisition by Defendant for a sewer facility. In support of its motion for summary judgment, Defendant offered the Affidavit of Raymond Yamashita of the Defendant's Department of General Planning, who testifies that he recommended redesignation of the subject property to "Preservation" in the process of preparing the Development Plan for the

Primary Urban Center and that his recommendation was not due to any knowledge of a planned sewer facility for Plaintiff's property. Defendant also offered the Affidavit of James Honke of the Defendant's Department of Public Works, Division of Wastewater Management, who testifies that said Division is charged with the function, among other things, of designing and site selection for wastewater facilities. Mr. Honke testifies that he has reviewed the records of said Division, and Plaintiff's property was not designated as the site for a pump station for the period 1979 through 1986 in any of said records.

The Court finds an absence of an issue of fact and accordingly finds it appropriate to grant Defendant's motion for summary judgment on the issue of conspiracy.

V. Conclusion

All issues in Plaintiff's Complaint, having been addressed in Defendant's motion for dismissal and for summary judgment, and the Court having found good cause to grant summary judgment in Defendant's favor on the issues of regulatory taking, contractual obligations, procedural due process and conspiracy, this order hereby concludes this matter.

DATED: Honolulu, Hawaii, Oct 6 1987 .

S/S Harold M. Fong
UNITED STATES DISTRICT JUDGE

CIVIL NO. 86-1069
TODA v. CITY AND COUNTY OF HONOLULU
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

iii-27 Exh. C

Under 2 Federal Forms Page 374

Section 3:835--Certiorari to review case pending in Court of Appeals before judgment: Tax Appeal Court Case #2485

Awarded: but appealed for lack of Constitutional violations and illegality

Hawaii SUPREME COURT CASE 12975

Order: rehearing denied. AFFIRMED

United States District Court

For the District of Hawaii

Civil No. 89-00087 DAE

Fraudulent Taxation of Real Property, and other similar Constitutional violations and illegality

This case is the same as Case 87-2820 and District Court CV86-1069 of the United States Court of Appeals and is requested be tied-in.

U.S.Constitution: Amendment 1 (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.Constitution: Amendment 7 (1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S.Constitution: It could possibly be ARTICLE 1, 2, 3, 6,or any other To have ONE CORPORATION allow within its offices ONE BRANCH of government.

U.S.Constitution: Amendment V (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution: Amendment XIV (1808)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.Constitution: Article I

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Maque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Partial Reports of Constitution./hht
Underlined WORDS as noticed./hht

BLACK'S LAW DICTIONARY, 5th Edition, by The Publishers Ed. Staff, St. Paul, Minn. West Publishing Co. 1979; Pages 280,281

CONSPIRACY:(a partial explanation)

A combination of confederacy between two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

.....

Crime of conspiracy is distinct from the crime contemplated by the conspiracy (target crime). Com. v. Dyer, 243 Mass. 472, 509; etc.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.Creg v. U.S. C.C. A. Cal. 81 F.2d 816, 822.

.....

.....

Hawaii Revised Statutes: Sec. 101-20 NOTICE. When the owner or claimant of the land sought to be condemned is known, the summons shall be served by delivering to the owner or claimant, or to an agent authorized by appointment or by law to received service of process, a certified copy thereof, together with a copy of the plaintiff's complaint. If the owner or claimant, although known, was never a resident of the State or has removed therefrom or cannot for any reason be served with process within the State, or if the owner or claimant is unknown, then the service of the summons upon the owner or claimant may be made in the manner provided by sections 634-23, 634-24, and 634-26. If the defendants are joined in the complaint by describing them as a class, then the service of the summons upon the defendants may be made by publication in a newspaper of general

circulation in the county in which the property is situated, in the manner provided by sections 634-23(3) and 634-26, and by giving such further notice as the court may order. The service of summons, as provided for in this section, shall be sufficient to give the court jurisdiction to proceed with and finally determine the case. (.... ....) ...

.....

.....

Hawaii Revised Statutes: (The Enabling Act)

Section 46-4 COUNTY ZONING. (a) This section and any ordinances or rules and regulations adopted in accordance with it, shall apply to those lands not contained within the forest reserve bounderies as established on January 31, 1957, or as subsequently amended.

.....

..... (the "provision" follows)

Nothing in this section shall invalidate any zoning ordinances or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

.....

REVISED LAWS OF HAWAII: (the Territorial Government--Title 20: Hon.Govt.Charter Commission)(partial pg.888, 889, 1955)

Section 149A-1 Charter Commission

....

Section 149A-3 Duties and functions of commission; proposed charter.

.....

Section 149A-4. Submission of Charter to Supervisors.

.....

Section 149A-5. Submission of charter to electors.

.....

Section 149A-6. Ratification of Charter by legislature; effect.

.....

(the REVISED ORDINANCE OF HAWAII, as incorporated) (through INITIATIVE)

REVISED ORDINANCES: Incorporation

Section 1-101 Incorporation--The people of the City and County of Honolulu shall be and continue as a body politic and corporate by the name of "City and County of Honolulu", hereinafter in this charter called "city". By that name it shall have perpetual succession.

Section 1-103. Structure of Government--The government provided by this charter shall consist of two coordinante branches to be known as the "legislative Branch" and the "Executive Branch".

REVISED ORDINANCES: Real Property Tax Section 8-1.2 (12) Compromises: With the approval of the Corporation Counsel, to compromise any claim arising under this chapter not exceeding $500 and if a claim exceeds $500, the director shall obtain the approval of the City Council, the administration of which is within the scope of his duties: and in any such case, there shall be placed on file and in his department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (b) the amount of penalties and interest imposed or proposed to be assessed, (c) the amount of penalties and interest imposed or which could have been imposed by law with respect to the item (A) as computed by him, (D) the total amount of liability as determined by the terms of the compromise, and the actual payments made there-

on with the dates thereof, and (E) the reasons for the compromise.

(13) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, regulations, or construction of the provisions of this chapter shall be applied without retroactive effect.

Taken from Section 8-1.2 of 1978 Supplement, Revised City Ordinances of Real Property Tax, page 37.

Revised Ordinance:

Section 13-106 Public Hearings: Notice--

1. No public hearing shall be held by any agency or the council, unless public notice is given prior to such hearing.

2. Notice of any public hearing shall be adequately publicized at least ten days prior to such hearing in a daily newspaper of general circulation in the city and may be advertised, as deemed helpful, in such other newspapers and through communications media as will afford the public maximum information concerning such hearing. The notice shall include:

(a) The date, time and place of such hearing.

(b) A statement in plain language of the nature or purpose, including the issues involved, if any, of such

hearing.

(c) A statement that all interested persons shall be afforded the opportunity of being heard.

Section 13-107. Title to Property--Except as otherwise provided by law, title to all property acquired by any agency of the city shall be vested in the city.

BLACK's LAW DICTIONARY, 5th Edition
by the Publishers Ed. Staff
St. Paul, Minn., West Publishing Co.
1979, Page 520

Ex post facto law: .....

An "ex post facto law" is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; a law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a

right which, when done, was lawful; a law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty; every law which in relation to the offense or its consequences alters the situation of a person to his disadvantage. Wilensky v. Fields, Fla. 267 Co.2d 1, 5

REVISED ORDINANCES: Sec. 8-1.25.Neglect of Duty; etc., Misdemeanor.

Any officer or employee of the Department of Finance, any person duly authorized by the director, or any police officer, on whom duties are imposed under this chapter, who wilfully fails or refuses or neglects to perform faithfully any duty or duties of him required by this chapter, shall be deemed guilty of a misdemeanor.
(Am. Ord. 80-72)

3:844 Request--To clerk of court possessed of record--For certification and transmission of all or part of record--by petitioner:

To: Assistant Clerk Suzy McDivitt, Clerk of Supreme Court of the United States:

Pursuant to Rule 21(1) of the Rules of the Supreme Court, you are hereby requested by Harvey H. Toda, petitioner, to certify and transmit to the Supreme Court of the United States the _____

(entire record or following designated parts of the record)

herein.

(where applicable, designate parts of record to be certified and transmitted).

Date: May 5, 1989.

Harvey H. Toda pro se
for petitioner
1363 Hoowali Street
Pearl City, Hawaii 96782

IN THE

URT OF THE UNITED STATES

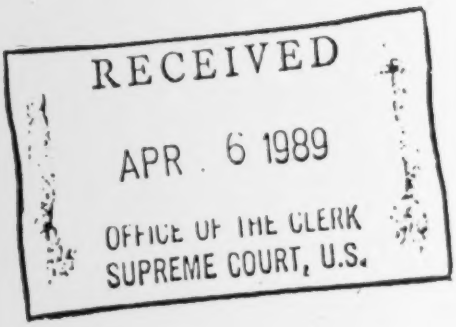
TOBER TERM 1988

NO.

TODA,

PETITIONER,

v.



unty Of Honolulu,

RESPONDENT.

VE TO PROCEED AS PER SE

e 12 .1 the case is being docketed

. and also under Rule 12 .3.

u, Hawaii, March 28, 1989.

Harvey M. Toda pro se
for Petitioner

STATEMENT OF RELATED CASES

Tax Appeal Court Case 2485 (City)
Supreme Court Case 12975, State of Hawaii
Tie-in DENIED, to 86-1069, now 8900087DAE

However, this is the same case as tied-in, through the violation of law in a civil way. As, the Director of Finance was subpoenaed, but refused entry by the Dep. Corp. Counsel, and approved by the Court. Though the initial cost of moneytary value was adjudicated in Court, the Illegality, and, Constitutional violations, were not accepted. The 4 reasons for this case is for TRIAL, as TRIAL BY JURY.

Notification through 84-111, revised ordinances, is still in the Circuit Court, and is not used in this case.

Undersigned is not sure of other cases.

CERTIFICATE OF SERVICE

I, Harvey H. Toda, provides 3 copies of this report for PETITION FOR THE WRIT OF CERTIORARI, through the Sheriff's Office of the State of Hawaii, to:

RICHARD D. WURDEMAN
Corporation Counsel
City and County of Honolulu
Honolulu, Hawaii 96813
Telephone: (808) 523-4115

Attorney for the City and County of Honolulu

Respondent.

DATED: Honolulu, Hawaii, June 26, 1989.

Harvey H. Toda pro se
for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1988

NO.

HARVEY H. TODA,

Petitioner,

V.

CITY AND COUNTY OF HONOLULU,

Respondent.

PROOF OF SERVICE

State of Hawaii)
) SS.
City and County of Honolulu)

Affiant, HARVEY H. TODA, after being duly sworn, disposes and says that pursuant to Court rules he served the within papers for Writ of Certiorari, to:

RICHARD D. WURDEMAN, Corporation Counsel, City and County of Honolulu, Honolulu, Hawaii 96813

Attorney for City and County of Honolulu

Respondent

Serviced by:

Sheriff Officer Norman K. Nakamaka

Date 6-26-89 1:25 P.M.

Received by Jane W. Howell, Deputy Corporation Counsel

Date 6-26-89

Position Deputy Corporation Counsel

Harvey L. Toda

Harvey H. Toda Affiant
pro se for Petitioner

Subscribed and Sworn to Before Me
this 24 day of June, 1989.

Jeanette M. L. Abiva

Notary Public
City and County of Honolulu
State of Hawaii

JEANETTE M. L. ABIVA NOTARY PUBLIC STATE OF HAWAII

My Commission Expires on: 10/25/92